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EXAMINER

JUSKA, CHERYL ANN

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 03/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/909,266

Applicant(s)

JERDEE ET AL.

Examiner

Cheryl Juska

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 July 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 and 22-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 23-31 is/are rejected.
- 7) ☒ Claim(s) 22 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Amendment***

1. Preliminary Amendments A and B have been entered. Amendment B amends claim 1, cancels claims 2-21, and adds new claims 22-31. Thus, the pending claims are 1 and 22-31.

### ***Information Disclosure Statement***

2. The IDS, submitted as Paper No. 4, is improper since Applicant merely submitted the Forms PTO-892 from the parent prosecution (09/252,599), rather than the proper Form 1449. Unless the references are cited by the Examiner on the attached 892, said references have not been considered in the prosecution of the instant application.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 25 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Claim 25 is indefinite because it is unclear which part of the carpet contains the additives. Are the additives present in the adhesive, the primary backing, the tufts, or the secondary backing? Claim 30 is similarly rejected. For the purposes of examination, the claims are interpreted as the additives being present in the adhesive composition.

***Claim Objections***

6. Claim 26 is objected to for the redundant use of both the terms “polyamide” and “nylon.”

A nylon is inherently a polyamide. Claim 31 is similarly objected to.

***Claim Rejections - 35 USC § 102***

7. Applicant claims a carpet having from 50-100% polymeric material comprising a tufted primary backing, an adhesive material, and a secondary backing. The adhesive material comprises a blend of an ethylene methyl acrylate copolymer (EMA) and at least one polymer selected from the group consisting of (a) low density polyethylenes (LDPE), (b) linear low density polyethylene (LLDPE), (c) high density polyethylene (HDPE), (d) ultra low density polyethylene (ULDPE), (e) ethylene-propylene copolymers, (f) elastomers, (g) styrenic copolymers of butadiene, (h) styrenic copolymers of acrylonitrile, (i) styrenic copolymers of ethylene, (j) metallocene based PE's, (k) polyester, (l) ethylene acrylic acid copolymers, (m) ethylene methyl acrylic acid copolymers, (n) butyl acrylate copolymers, (o) ionomers, (p) polyamides, and (q) maleic anhydrides. Preferably, the adhesive is a blend of EMA and one of LDPE, LLDPE, HDPE, ULDPE, and metallocene based PE's.

8. In another embodiment, Applicant claims the adhesive material consists essentially of a blend of an ethylene methyl acrylate copolymer (EMA) and at least one polymer selected from the group consisting of (a) polypropylene (PP), (b) rubber, (c) EPDM rubber, (d) ethylene vinyl acetate copolymers, and (e) mixtures thereof.

9. Applicant also limits the adhesive to be a coextruded blend and to have a thickness of 0.001-0.050 inches. The carpet may also include additives such as fillers, flame retardants, odor

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reducing agents, scent enhancing agents, and UV protectors. The tufts of fibers, primary, and secondary backing materials may be made of polypropylene, polyester, acrylic, polyethylene, polyamide, nylon, wool, cotton, rayon, and combinations thereof.

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 27, 30, and 31 are rejected under 35 USC 102(b) as being anticipated by US 3,982,051 issued to Taft et al.

Taft discloses an adhesive carpet backing composition for adhering a secondary backing to a tufted primary backing (Example 1, col. 7, line 63-col. 8, line 50). The adhesive backing comprises (a) 5-50% by weight of a copolymer of ethylene and vinyl acetate (EVA) and/or a copolymer of ethylene and alkyl acrylate, having an alkyl group of 1-18 carbon atoms, (b) 10-85% by weight of atactic polypropylene, and (c) 10-50% by weight of vulcanized rubber (abstract and col. 2, lines 55-65). Specific examples of suitable acrylates include methyl acrylate (col. 4, lines 16-21). The tufts may be of nylon, acrylic, wool, cotton, or rayon, while the primary and secondary backings may be of jute or polypropylene (col. 1, lines 50-64). Taft also teaches the use of fillers and flame retardants (col. 6, lines 21-37). Thus, claims 27, 30, and 31 are rejected.

12. Claims 27, 30, and 31 are rejected under 35 USC 102(b) as being anticipated by US 5,445,860 issued to Bova.

Bova discloses a tufted carpet comprising (a) yarns tufted into a primary backing, (b) an elastomeric adhesive, and (c) a secondary backing (abstract). The primary and secondary

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backings may be made of polypropylene, cotton, or jute (col. 3, lines 36-43 and col. 7, lines 60-62). The elastomeric adhesive may be an EVA copolymer (col. 8, lines 1-7). Alternatively, said adhesive may be EMA (col. 8, lines 30-38). Bova also teaches a blend of two ethylene copolymers such as 50-80% EVA and 10-30% EMA (col. 8, lines 39-42). The backing may include a filler (col. 8, lines 54-63). Therefore, claims 27, 30, and 31 are rejected.

13. Claims 1 and 23-31 are rejected under 35 USC 102(b) as being anticipated by US 4,508,771 issued to Peoples, Jr. et al.

Peoples discloses a thermoplastic carpet backing composition comprising copolymers of ethylene and unsaturated esters of lower carboxylic acids, such as vinyl esters and/or lower alkyl acrylates in admixture with olefinic elastomers and filler (abstract). The preferred elastomers include ethylene propylene copolymers (abstract). The lower alkyl acrylate may be a methyl acrylate (col. 7, lines 4-6). The thermoplastic backing layer may be applied directly to a tufted primary backing or may be applied over a pre-coat layer, which may be a copolymer of ethylene and a vinyl ester of a lower carboxylic acid, such as a EVA (col. 5, lines 12-34 and col. 9, line 67-col. 10, line 1). Additionally, a textile pad, or secondary backing, may be applied to the thermoplastic backing (col. 5, lines 38-43). Furthermore, another thermoplastic coating layer, such as an ethylene copolymer, may be applied between the thermoplastic backing layer and the secondary backing by way of co-extrusion with said thermoplastic backing layer (col. 10, lines 14-22). The carpet may comprise face fibers of nylon, polyester, or polypropylene tufted into a primary backing of jute or polypropylene (col. 10, lines 23-33). The thickness of the thermoplastic backing layer may be 0.015-0.125 inches (col. 11, lines 19-29). Therefore, claims 1 and 23-31 are rejected.

***Claim Rejections - 35 USC § 103***

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claim 29 is rejected under 35 USC 103(a) as being unpatentable over the cited Taft patent or Bova patents in view of US 5,240,530 issued to Fink or the cited Peoples reference.

Taft and Bova are silent with respect to the thickness of the adhesive backing layer. However, Fink discloses a carpet having an extruded thermoplastic adhesive backing having a thickness of 0.5-20 mils, or 0.0005-0.02 inches (col. 11, lines 52-58). Additionally, as noted above, Peoples teaches a backing thickness within the range presently claimed. Hence, it would have been obvious to one skilled in the art to extrude the adhesive backings of Taft or Bova at a thickness taught by Fink or Peoples. Motivation to do so would be that this range is conventional in the art in that it is sufficient to form a bond between the primary backing and secondary backing, while not adding too much weight to the carpet. Therefore, claim 29 is rejected.

***Allowable Subject Matter***

16. Claim 22 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art does not teach or fairly suggest employing a blend of EMA

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and one of the claimed DLDPE, LLDPE, HDPE, ULDPE, or metallocene PE's as an adhesive backing for a tufted carpet.

***Conclusion***

17. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Cheryl Juska whose telephone number is 703-305-4472. The Examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

  
CHERYL A. JUSKA  
PRIMARY EXAMINER

cj  
March 23, 2003